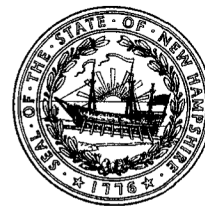




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

Conn Brothers Construction, Inc.  
Lost River Road  
Post Office Box 670  
North Woodstock, NH 03262

Re: Gravel Pit on Route 3, Tax Map 208 Lot 13  
North Woodstock, NH

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 05 - 046**

May 24, 2005

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Conn Brothers Construction, Inc., pursuant to RSA 485-A:22 and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling \$6,000 be imposed against Conn Brothers Construction, Inc., for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Water Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302-0095.
2. Conn Brothers Construction, Inc. ("CBC") is a New Hampshire corporation having a principal office address on Lost River Road and a mailing address of Post Office Box 670 in North Woodstock, NH.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS**

1. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters under a permit system. As part of this program, the Commissioner of DES has adopted Env-Ws 401-405 relating to permits and has adopted Env-Ws 1700 to establish water quality standards for the state's waters.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations relating to this program. Pursuant to this section, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
3. CBC operates a gravel pit on Route 3 in North Woodstock, NH, identified on Woodstock Tax Map 208 as lot 13 ("the Facility").
4. A Woodstock Police Department report (Incident #: 05-173-OF) documents that on April 17, 2005, a Woodstock Police officer was shown the pumps "that were running out of Conn's pit

into the woods on Campbell's property and then onto the Chase property and then onto his property [an adjacent property] into the brook [Beaver Brook]."

5. On April 18, 2005 the Division received a complaint about a discharge from a gravel pit at the subject Facility, over an adjacent farmland, and into Beaver Brook.
6. On April 18, 2005 Division inspectors observed an unpermitted discharge to Beaver Brook originating at the Facility. The discharge consisted of gravel pit water being pumped from the facility to the adjacent property, flowing through a cattle pasture, reaching Beaver Brook. The discharge was pumped from the Facility through two six inch lines onto the adjacent property at an estimated flow rate of 1400 gallons per minute. The water follows the contours of the adjacent property until it becomes flooded and then reaches Beaver Brook.
7. The discharge water from the gravel pit, flowing through adjacent properties, over a cattle pasture and into Beaver Brook constitutes industrial waste or other wastes pursuant to RSA 485-A:2. The Division inspectors observed the discharge of water from the gravel pit by CBC on April 18, 2005 for over an hour.
8. Neither CBC nor the Facility is permitted for any discharges to Beaver Brook or to any other surface waters of the state.
9. On April 20, 2005 the complainant phoned the Division to report that the pumping at the subject Facility was continuing.
10. On April 20, 2005 a Division staff member phoned CBC and spoke to Bill Conn about the need for a permit to discharge to a surface water of the state and about ceasing the discharge without a permit.
11. On April 21, 2005 a consultant called the Division on behalf of CBC to inquire about permitting issues and reported that CBC has stopped pumping.
12. DES issued Administrative Order No. WD 05-15 to CBC, dated April 22, 2005, to immediately cease and desist any activity which results in a discharge to Beaver Brook or to any other surface waters of the state.
13. On May 2, 2005 the complainant called and reported that the discharge had ceased.
14. DES had previously issued Administrative Order No. WD 01-08 to CBC, dated February 1, 2001, to immediately cease and desist all pumping and discharge activities from the same facility, as a result of similar unpermitted discharge activities at the Facility.

#### **IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINE**

1. CBC has violated RSA 485-A:13,I(a) by discharging waste from its gravel pit operations, through a cattle pasture, into Beaver Brook, without a permit to discharge to a surface water of the state. For this violation, Env-C 603.05(a) specifies a fine of \$2,000 per 5,000 gallons or portion thereof discharged or \$2,000 per hour or portion thereof that the sewage or other wastes are discharged, whichever is greater. For the violations noted, which occurred anywhere from

April 17–20, 2005, at flow rates up to an estimated 1400 gallons per minute, the Division asserts that at least 15,000 gallons were discharged and therefore is seeking a fine of \$6,000.

**The total fine being sought is \$6,000.**

#### **V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING**

**Pursuant to Env-C 601.06, CBC is required to respond to this notice. Please respond no later than July 5, 2005 using the enclosed colored form.**

1. If CBC would like to have a hearing, please have an authorized representative sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If CBC wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance form, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If CBC chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

CBC is not required to be represented by an attorney. If CBC chooses to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

#### **VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that the CBC committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that the CBC committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that CBC proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** the CBC did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** the CBC did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, CBC was making a good faith effort to comply

with the requirement that was violated.

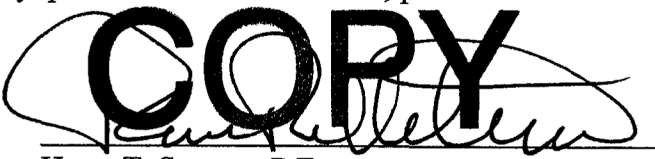
3. CBC has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to the CBC's case which was not known to the Division at the time the fine was proposed.

**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**An administrative fine hearing is a formal hearing.** All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that CBC committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is CBC's opportunity to present testimony and evidence that CBC did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If CBC has any evidence, such as photographs, business records or other documents, that CBC believes show that CBC did not commit the violation(s) or that otherwise support CBC's position, the CBC should bring the evidence to the hearing. CBC may also bring witnesses (other people) to the hearing to testify on CBC's behalf.

\*\*\*\*\*

Information regarding this proposed fine may be made available to the public via the DES Web page ([www.des.nh.gov](http://www.des.nh.gov)). If the CBC has any questions about this matter, please contact the DES Legal Unit, at (603) 271-7509.

  
for Harry T. Stewart, P.E.  
Director  
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Michael J. Walls, DES Assistant Commissioner  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Public Information Officer, DES PIP Office  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
Stergios Spanos, WWEB Compliance and Enforcement Subsection  
George Berlandi, Supervisor, WWEB Permits and Compliance Section  
cc: Woodstock Board of Selectman  
Woodstock Police Department (reference Incident #: 05-173-OF)  
William Conn, PO Box 670, N. Woodstock, NH 03262 (registered agent)

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**CONN BROTHERS CONSTRUCTION, INC. IS REQUIRED BY LAW  
TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN July 5, 2005**

Please check the appropriate line and fill in the requested information below.

**APPEARANCE** On behalf of Conn Brothers Construction, Inc.:

\_\_\_\_\_ I request to have a **formal hearing** scheduled in this matter.

\_\_\_\_\_ I would like to **meet informally** to discuss the issues in this matter.

**WAIVER OF HEARING** On behalf of Conn Brothers Construction, Inc.:

\_\_\_\_\_ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$6,000 paid to "Treasurer, State of New Hampshire" is enclosed.\*

*\* If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (please print or type):

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Phone:

**RETURN THIS PAGE ONLY AND ANY PAYMENT TO:**

**DES Legal Unit**

**Attn: Michael Sclafani, Legal Assistant**

**P.O. Box 95**

**Concord, NH 03302-0095**

# ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • [www.des.nh.gov](http://www.des.nh.gov)

CO 2

2002

## Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine has not been made... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

*This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.*

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.